



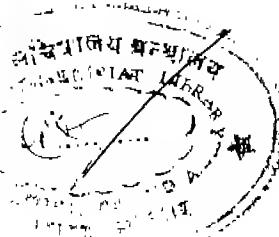
# भारत का राजपत्र

## The Gazette of India

असाधारण  
EXTRAORDINARY

भाग II—खण्ड 2  
PART II—Section 2

प्राधिकार से प्रकाशित  
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इस भाग में विभिन्न पृष्ठों संलग्न वाली जाती है जिससे कि यह धर्मग्रंथ संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed  
as a separate compilation

### LOK SABHA

The following Bills were introduced in Lok Sabha on 16th July, 1992:—

BILL NO. 95 OF 1992

*A Bill to provide for the levy and collection of a cess on copying requirement and for the transfer of the same to the owners of rights and for matters connected therewith.*

Be it enacted by Parliament in the Forty-third Year of the Republic of India as follows:—

1. (1) This Act may be called the Copyright Cess Act, 1992.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In this Act, unless the context otherwise requires,—

(a) "copyright society" means a copyright society referred to in section 33 of the Copyright Act, 1957;

(b) "prescribed" means prescribed by rules made under this Act;

(c) "copying equipment" means any equipment referred to in section 52B of the Copyright Act, 1957 or any tapes or audio cassette or video cassette or the like recording media used with such equipment.

Short title,  
extent  
and  
commencement,

Definitions.

Levy of  
cess on  
manufacturers  
of copying  
equipment.

3. (1) There shall be levied and collected by way of cess for the purposes of the Copyright Act, 1957, a duty of excise on copying equipment manufactured in India at such rate not exceeding ten per cent. of the ex-factory prices of the copying equipment as the Central Government may, from time to time, specify by notification in the Official Gazette.

14 of 1957.

(2) The duty of excise levied under sub-section (1) shall be in addition to the duty of excise if any, leviable on any such equipment referred to in sub-section (1) under the Central Excises and Salt Act, 1944, or any other law for the time being in force.

1 of 1944.

(3) The duty of excise levied under sub-section (1) shall be payable by the manufacturer of the copying equipment.

(4) The provisions of the Central Excises and Salt Act, 1944, and the rules made thereunder, including those relating to refunds and exemptions from duty, shall, so far as may be, apply under that Act in relation to the levy and collection of the said duty of excise as they apply in relation to the levy and collection of the duty of excise on any such equipment referred to in sub-section (1).

1 of 1944.

Levy  
of  
cess on  
importers  
of copy-  
ing  
equip-  
ment.

4. (1) There shall be levied and collected by way of cess for the purpose of the Copyright Act, 1957, a duty of customs on all copying equipment at such rate not exceeding ten per cent. of the imported price of copying equipment, as the Central Government may, from time to time, specify by notification in the Official Gazette.

14 of 1957.

(2) The duty of customs levied under sub-section (1) shall be in addition to the duty of customs leviable on copying equipment under the Customs Act, 1962, or any other law for the time being in force.

52 of 1962.

(3) The provisions of the Customs Act, 1962, and the rules and regulations made thereunder, including those relatable to refund and exemption of duty shall, so far as may be, apply under that Act in relation to levy and collection of the said duty of customs on copying equipment under that Act.

52 of 1962.

Crediting  
proceeds of  
duty to the  
consolidated  
Fund of India.

5. The proceeds of the duty of excise levied under section 3 and the proceeds of the duty of customs levied under section 4 shall first be credited to the Consolidated Fund of India and the Central Government may, if Parliament, by appropriation made by law in this behalf, so provides, pay to the copyright society, from time to time, from out of such proceeds (after deducting the cost of collection) such sums of money as it may think fit for being utilised for the purposes of the Copyright Act, 1957.

14 of 1957.

Power to  
call for in-  
formation.

6. The Central Government may require any manufacturer and importer of copying equipment to furnish, for the purposes of this Act, statistical and other information in such form and within such period as may be prescribed.

Power  
to make  
rules.

7. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for the form in which and

the period within which statistical and other information may be furnished under section 6.

(3) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

## STATEMENT OF OBJECTS AND REASONS

The Bill is complementary to the Copyright (Second Amendment) Bill 1992. The Copyright (Second Amendment) Bill, 1992 seeks to amend the provisions of the Copyright Act, 1957 *inter alia* to make provision for payment of remuneration to the owners of rights reproduction of works by reprographic equipment or by means of devices such as tape-recorders and video-cassette recorders, where such reproduction would not under the existing law be infringement of copyright, shall be subject to the payment of remuneration to the owner of rights by means of a levy on such equipment. This Bill seeks to provide for levy, by way of cess, of duties of excise and customs on the manufacture and import respectively of the relevant equipment in order to give effect to the aforesaid provisions of the Copyright (Second Amendment) Bill, 1992.

2. The Bill seeks to achieve the above object.

NEW DELHI;

ARJUN SINGH

*The 6th May, 1992.*

## FINANCIAL MEMORANDUM

Clause 3 of the Bill seeks to provide for the levy, by way of a cess, of a duty of excise on copying equipment as defined under clause 2. Clause 4 seeks to provide for the levy, by way of cess, of a duty of customs on such equipment subject to the maximum rate of 10%. The actual rate of levy is to be fixed by the Central Government by notification.

2. The provisions of the Copyright Cess Bill, 1992, are to be read with clause 11 of the Copyright (Second Amendment) Bill, 1992. The necessity for levy of cess will arise only after the Central Government reaches the conclusion that the rights of the owner of right in any class of work are being administered generally throughout India by one or more copyright societies as contemplated in clause 11 of the said Bill. This will depend on the voluntary decision of the owner of right to establish copyright societies and entrust administration of their rights to them. It will not be possible at present to forecast as to when the societies will actually come into being in respect of different classes of work. It is, therefore, not possible at this stage to forecast the quantum of levy. However, on the basis of available information regarding the production of the relevant copying equipment, it is possible to estimate that after the levy is being collected on the relevant types of copying equipment, at an average rate of 5% of the value of equipment, it may be of the order of Rs. 75 crores per annum. The expenditure on the collection of the said cess would be deducted from the proceeds and would be about 4% of the proceeds as is being charged normally in respect of similar levies.

3. The Bill does not involve any other expenditure, either recurring or non-recurring.

**MEMORANDUM REGARDING DELEGATED LEGISLATION**

Clause 7 of the bill empowers the Central Government to make rules for carrying out the purposes of the proposed legislation. The matters with respect to which rules may be made have been detailed in sub-clause (2) and relate mainly to prescribing the form for furnishing statistical and other information by the manufacturers and importers of copying equipment.

2. As the matters with respect to which rules under the aforesaid clause are sought to be made are matters of procedure or detail or matters with respect to which it is not practicable to make express provision in the legislation itself, the delegation of legislative power is of normal in character.

## BILL NO. 105 OF 1992

*A Bill further to amend the Copyright Act, 1957.*

Be it enacted by Parliament in the Forty-third Year of the Republic of India as follows:—

1. (1) This Act may be called the Copyright (Second Amendment) Act, 1992.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

14 of 1957.

2. In section 2 of the Copyright Act, 1957 (hereinafter referred to as the principal Act),—

Amend-  
ment of  
section 2.

(i) in clause (a),—

(a) in sub-clause (iii), the word "and", occurring at the end, shall be omitted;

(b) in sub-clause (iv), the word "and" shall be inserted at the end;

(c) after sub-clause (iv) as so amended, the following sub-clause shall be inserted, namely:—

"(v) in relation to any work, any use of such work involving its re-arrangement or alteration;";

(ii) in clause (b) and in all other provisions of the principal Act, for the words "architectural work of art", wherever they occur, the words "work of architecture" shall be substituted;

(iii) in clause (d), for sub-clauses (v) and (vi), the following sub-clauses shall be substituted, namely:—

"(v) in relation to a cinematograph film or sound recording, the producer; and

(vi) in relation to any literary, dramatic, musical or artistic work which is computer-generated, the person who causes the work to be created;";

(iv) for clause (f), the following clause shall be substituted, namely:—

(f) "cinematograph film" means any work of visual recording on any medium produced through a process from which a moving image may be produced by any means and includes a sound recording accompanying such visual recording and "cinematograph" shall be construed as including any work produced by any process analogous to cinematography including video films;";

(v) for clause (ff), the following clauses shall be substituted, namely:—

(ff) "communication to the public" means making any work available for being seen or heard or otherwise enjoyed by the public directly or by any means of display or diffusion other than by issuing copies of such work regardless of whether any member of the public actually sees, hears or otherwise enjoys the work so made available.

*Explanation.*—For the purposes of this clause, communication through satellite or cable or any other means of simultaneous communication to more than one household or place of residence including residential rooms of any hotel or hostel shall be deemed to be communication to the public;

(ffa) "composer", in relation to a musical work, means the person who composes the music regardless of whether he records it in any form of graphical notation;

(ffb) "computer" includes any electronic or similar device having information processing capabilities;

(ffc) "computer programme" means a set of instructions expressed in words, codes, schemes or in any other form, in a machine, readable medium, of causing a computer to perform a particular task or achieve a particular result;

(ffd) "copyright society" means a society registered under sub-section (3) of section 33;';

(vi) for clause (m), the following clause shall be substituted, namely:—

‘(m) “infringing copy” means,—

(i) in relation to a literary, dramatic, musical or artistic work, a reproduction thereof otherwise than in the form of a cinematographic film;

(ii) in relation to a cinematographic film, a copy of the film made on any medium by any means;

(iii) in relation to a sound recording, any other recording embodying the same sound recording, made by any means;

(iv) in relation to a programme or performance in which such a broadcast reproduction right or a performer's right subsists under the provisions of this Act, the sound recording or a cinematographic film of such programme or performance,

if such reproduction, copy or sound recording is made or imported in contravention of the provisions of this Act;';

(vii) for clause (o), the following clause shall be substituted, namely:—

‘(o) “literary work” includes computer programmes, tables and compilations including computer data basis;';

(viii) for clause (p), the following clause shall be substituted, namely:—

‘(p) “musical work” means a work consisting of music and includes any graphical notation of such work but does not include any words or any action intended to be sung, spoken or performed with the music;';

(ix) for clause (q), the following clause shall be substituted, namely:—

‘(q) “performance”, in relation to performer's right, means any visual or acoustic presentation made live by one or more performers;';

(x) after clause (q), the following clause shall be inserted, namely:—

‘(qq) “performer” includes an actor, singer, musician, dancer, acrobat, jugglar, snake charmer, a person delivering a lecture or any other person who makes a performance;’;

(xi) clause (r) shall be omitted;

(xii) in clause (t) and in all other provisions of the principal Act, for the word “record”, wherever it occurs, the words “sound recording” shall be substituted;

(xiii) after clause (u), the following clause shall be inserted, namely:—

‘(uu) “producer”, in relation to a cinematograph film or sound recording, means a person who takes the initiative and responsibility for making the work;’;

(xiv) clause (w) shall be omitted;

(xv) for clause (x), the following clauses shall be substituted, namely:—

‘(x) “rephotography” means the making of copies of a work, by photo copying or similar means;

‘(xx) “sound recording” means a recording of sounds from which such sounds may be produced regardless of the medium on which such recording is made or the method by which the sounds are produced.’

Substitution of new section for section 3.

3. For section 3 of the principal Act, the following section shall be substituted, namely:—

Meaning of publication.

‘3. For the purposes of this Act, “publication” means making a work available to the public by issue of copies or by communicating the work to the public.’

Substitution of new section for section 6.

4. For section 6 of the principal Act, the following section shall be substituted, namely:—

Certain disputes to be decided by Copyright Board.

“6. If any question arises,—

(a) whether a work has been published or, as to the date on which a work was published for the purposes of Chapter V, or

(b) whether the term of copyright for any work is shorter in any other country than that provided in respect of that work under this Act,

it shall be referred to the Copyright Board constituted under section 11 whose decision thereon shall be final:

Provided that if in the opinion of the Copyright Board, the issue of copies or communication to the public referred to in section 3 was of an insignificant nature, it shall not be deemed to be publication for the purposes of that section.”.

## 5. In section 11 of the principal Act,—

(a) in sub-section (1), for the word "eight", the word "fourteen" shall be substituted;

(b) in sub-section (3), the words "the Supreme Court or" shall be omitted.

## 6. In section 12 of the principal Act,—

(a) after sub-section (2), the following proviso shall be inserted, namely:—

"Provided that, if the Chairman is of opinion that any matter of importance is required to be heard by a larger bench, he may refer the matter to a special bench consisting of five members.";

(b) in sub-section (3), for the proviso, the following proviso shall be substituted, namely:—

"Provided that where there is no such majority, the opinion of the Chairman shall prevail.";

(c) in sub-section (4), for the words "The Copyright Board", the words "The Chairman" shall be substituted.

## 7. For section 14 of the principal Act, the following section shall be substituted, namely:—

'14. For the purposes of this Act, "copyright" means the exclusive right, subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely:—

(a) in the case of a literary, dramatic or musical work, not being a computer programme,—

(i) to reproduce the work in any material form including the storing of it in any medium by electronic means;

(ii) to issue copies of the work to the public not being copies already in circulation;

(iii) to perform the work in public, or communicate it to the public;

(iv) to make any cinematograph film or sound recording in respect of the work;

(v) to make any translation of the work;

(vi) to make any adaptation of the work;

(vii) to do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-clauses (i) to (vi);

(b) in the case of a computer programme,—

(i) to do any of the acts specified in clause (a);

Amend-  
ment of  
section 11.

Amend-  
ment of  
section 12.

Substi-  
tution of  
new sec-  
tion for  
section  
14.

Mean-  
ing of  
copy-  
right.

(ii) to sell or give on hire, or offer for sale or hire, any copy of the computer programme, regardless of whether such copy has been sold or given on hire on earlier occasions;

(c) in the case of an artistic work,—

(i) to reproduce the work in any material form including depiction in three dimensions of a two dimensional work or in two dimensions of a three dimensional work;

(ii) to communicate the work to the public;

(iii) to issue copies of the work to the public not being copies already in circulation;

(iv) to include the work in any cinematograph film;

(v) to make any adaptation of the work;

(vi) to do in relation to an adaptation of the work any of the acts specified in relation to the work in sub-clauses (i) to (iv);

(d) in the case of a cinematograph film,—

(i) to make a copy of the film, including a photograph of any image forming part thereof;

(ii) to sell or give on hire, or offer for sale or hire, any copy of the film, regardless of whether such copy has been sold or given on hire on earlier occasions;

(iii) to communicate the film to the public;

(e) in the case of a sound recording,—

(i) to make any other sound recording embodying it;

(ii) to sell or give on hire, or offer for sale or hire, any copy of the sound recording regardless of whether such copy has been sold or given on hire on earlier occasions;

(iii) to communicate the sound recording to the public.

**Explanation:**— For the purposes of this section, a copy which has been sold once shall be deemed to be a copy already in circulation.

8. In section 19 of the principal Act, for sub-section (2), the following sub-sections shall be substituted, namely:—

(2) The assignment of copyright in any work shall identify such work, and shall specify the rights assigned and the duration and territorial extent of such assignment.

(3) If the rights assigned under sub-section (1) are not specified, it shall be presumed that the assigner has assigned all his rights under this Act:

Provided that if the assignee does not exercise any of such rights within a period of one year from the date of the assignment,

the assignment in respect of such rights shall be deemed to have lapsed after the expiry of the said period.

(4) If the period of assignment is not stated, it shall be deemed to be five years from the date of assignment.

(5) If the territorial extent of assignment of the rights is not specified, it shall be presumed to extend within India.

(6) Nothing in sub-section (2), or sub-section (3) or sub-section (4) or sub-section (5) shall be applicable to assignments made before the coming into force of the Copyright (Second Amendment) Act, 1992.”.

**9. For section 19A of the principal Act, the following section shall be substituted, namely:—**

Substitution of new section for section 19A.

“19A. (1) If an assignee fails to make sufficient exercise of the rights assigned to him, and such failure is not attributable to any act or omission of the assignor, then, the Copyright Board may, on receipt of a complaint from the assignor and after holding such inquiry as it may deem necessary, revoke such assignment.

Disputes with respect to assignment of copyright.

(2) If any dispute arises with respect to the assignment of any copyright, the Copyright Board may, on receipt of a complaint from the aggrieved party and after holding such inquiry as it considers necessary, pass such order as it may deem fit including an order for the recovery of any royalty payable:

Provided that the Copyright Board shall not pass any order under this sub-section to revoke the assignment unless it is satisfied that the terms of assignment are harsh to the assignor in case the assignor is also the author:

Provided further that no order of revocation of assignment under this sub-section, shall be made within a period of five years from the date of such assignment.”.

**10. After section 30 of the principal Act, the following section shall be inserted, namely:—**

Insertion of new section 30 A.

“30A. The provisions of sections 19 and 19A shall, with any necessary adaptations and modifications, apply in relation to a licence under section 30 as they apply in relation to assignment of copyright in a work.”.

Application of sections 19 and 19A.

**11. For Chapter VII of the principal Act, the following Chapter shall be substituted, namely:—**

Substitution of new Chapter for Chapter VII.

## “CHAPTER VII

### COPYRIGHT SOCIETIES

33. (1) No person or association of persons shall, after coming into force of the Copyright (Second Amendment) Act, 1992, com-

Copyright

societies  
to file  
state-  
ment  
of fees,  
charges  
and  
royal-  
ties.

mence or carry on the business of issuing or granting licences in respect of any work in which copyright subsists, or in respect of any other rights conferred by this Act except under or in accordance with the registration granted under sub-section (3):

Provided that a performing rights society functioning in accordance with the provisions of section 33 on the date immediately before the coming into force of the said Act shall be deemed to be a copyright society for the purposes of this Chapter.

(2) Any association of persons who fulfils such conditions as may be prescribed may apply for permission to do the business specified in sub-section (1) to the Registrar of Copyrights who shall submit the application to the Central Government.

(3) The Central Government may, having regard to the interests of the authors and other owners of rights under this Act, the interest and convenience of the public and in particular of the groups of persons who are most likely to seek licences in respect of the relevant rights and the ability and professional competence of the applicants, register such association of persons as a copyright society subject to such conditions as may be prescribed:

Provided that the Central Government shall not ordinarily register more than one copyright society to do business in respect of the same class of works.

(4) The Central Government may, if it is satisfied that a copyright society is being managed in a manner detrimental to the interests of the owners of rights concerned, cancel the registration of such society after such inquiry as may be prescribed.

(5) If the Central Government is of the opinion that in the interest of the owners of rights concerned, it is necessary so to do, it may, by order, suspend the registration of such society pending inquiry for such period not exceeding one year as may be specified in such order under sub-section (4) and that Government shall appoint an administrator to discharge the functions of the copyright society.

Adminis-  
tration of  
rights of  
owner by  
copyright  
society.

34. (1) Subject to such conditions as may be prescribed,—

(a) a copyright society may accept from an owner of rights exclusive authorisation to administer any right in any work by issue of licences or collection of licence fees or both; and

(b) an owner of rights shall have the right to withdraw such authorisation without prejudice to the rights of the copyright society under any contract.

(2) It shall be competent for a copyright society to enter into agreement with any foreign society or organisation administering rights corresponding to rights under this Act, to entrust to such foreign society or organisation the administration in any foreign country of rights administered by the said copyright society in India, or for administering in India the rights administered in a foreign country by such foreign society or organisation:

Provided that no such society or organisation shall permit any discrimination in regard to the terms of licence or the distribution of fees collected between rights in Indian and other works.

(3) Subject to such conditions as may be prescribed, a copyright society may—

(i) issue licences under section 30 in respect of any rights under this Act;

(ii) collect fees in pursuance of such licences;

(iii) distribute such fees among owners of rights after making deductions for its own expenses;

(iv) perform any other functions consistent with the provisions of section 35.

34A. (1) If the Central Government is of the opinion that a copyright society for a class of work is generally administering the rights of the owners of rights in such work throughout India, it shall appoint that society for the purposes of this section.

(2) The copyright society appointed under sub-section (1) shall pay remuneration to the owners of rights from the proceeds to be paid to it under section 5 of the Copyright Cess Act, 1992.

(3) The copyright society shall, subject to such rules as may be made in this behalf, frame a scheme for determining the quantum of remuneration payable to individual copyright owners having regard to the number of copies of the work in circulation:

Provided that such scheme shall restrict payment to the owners of rights whose works have attained a level of circulation which the copyright society considers reasonable.

35. (1) Every copyright society shall be subject to the collective control of the owners of rights under this Act whose rights it administers (not being owners of rights under this Act administered by a foreign society or organisation referred to in sub-section (2) of section 34) and shall, in such manner as may be prescribed,—

(a) obtain the approval of such owners of rights for its procedures of collection and distribution of fees;

(b) obtain their approval for the utilisation of any amounts collected as fees for any purpose other than distribution to the owner of rights; and

(c) provide to such owners regular, full and detailed information concerning all its activities in relation to the administration of their rights.

(2) All fees distributed among the owners of rights shall, as far as may be, be distributed in proportion to the actual use of their works.

36. (1) Every copyright society shall submit to the Registrar of Copyrights such returns as may be prescribed.

(2) Any officer duly authorised by the Central Government in this behalf may call for any report and also call for any records of

Pay-  
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remune-  
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society.

Control  
over the  
copyright  
society  
by the  
owner of  
rights.

Sub-  
mission of  
returns  
and re-  
ports.

any copyright society for the purpose of satisfying himself that the fees collected by the society in respect of rights administered by it are being utilised or distributed in accordance with the provisions of this Act.

Rights and liabilities of performing rights societies.

36A. Nothing in this Chapter shall affect any rights or liabilities in any work in connection with a performing rights society which had accrued or were incurred on or before the day prior to the commencement of the Copyright (Second Amendment) Act, 1992, or any legal proceedings in respect of any such rights or liabilities pending on that day.”.

Amend-  
ment of  
Chapter  
VIII.

12. In Chapter VIII of the principal Act, for the heading “RIGHTS OF BROADCASTING AUTHORITIES”, the heading “RIGHTS OF BROADCASTING ORGANISATION AND OF PERFORMERS” shall be substituted.

Substi-  
tution of  
new  
section  
for  
section 37.

Broad-  
cast  
reproduc-  
tion right.

13. For section 37 of the principal Act, the following section shall be substituted, namely:—

“37. (1) Every broadcasting organisation shall have a special right to be known as “broadcast reproduction right” in respect of its broadcasts.

(2) The broadcast reproduction right shall subsist until twenty-five years from the beginning of the calendar year next following the year in which the broadcast is made.

(3) During the continuance of a broadcast reproduction right in relation to any broadcast, any person who, without the licence of the owner of the right does any of the following acts of the broadcast or any substantial part thereof,—

(a) re-broadcasts the broadcast; or

(b) causes the broadcast to be heard or seen by the public on payment of any charges; or

(c) makes any sound recording or visual recording of the broadcast; or

(d) makes any reproduction of such sound recording or visual recording where such initial recording was done without licence or, where it was licensed, for any purpose not envisaged by such licence; or

(e) sells or hires to the public, or offers for such sale or hire, any such sound recording or visual recording referred to in clause (c) or clause (d),

shall, subject to the provisions of section 39, be deemed to have infringed the broadcast reproduction right.”.

14. For section 38 of the principal Act, the following section shall be substituted, namely:—

Substitution of  
new  
section  
for  
section 38.

38. (1) Where any performer appears or engages in any performance, he shall have a special right to be known as the "performer's right" in relation to such performance. Performer's right.

(2) The performer's right shall subsist until twenty-five years from the beginning of the calendar year next following the year in which the performance is made.

(3) During the continuance of a performer's right in relation to any performance, any person who, without the consent of the performer, does any of the following acts in respect of the performance or any substantial part thereof, namely:—

(a) makes a sound recording or visual recording of the performance; or

(b) reproduces a sound recording or visual recording of the performance, which sound recording or visual recording was—

(i) made without the performer's consent; or

(ii) made for purposes different from those for which the performer gave his consent; or

(iii) made for purposes different from those referred to in section 39 from a sound recording or visual recording which was made in accordance with section 39; or

(c) broadcasts the performance except where the broadcast is made from a sound recording or visual recording other than one made in accordance with section 39, or is a re-broadcast by the same broadcasting organisation of an earlier broadcast which did not infringe the performer's right; or

(d) communicates the performance to the public otherwise than by broadcast, except where such communication to the public is made from a sound recording or a visual recording or a broadcast,

shall, subject to the provisions of section 39, be deemed to have infringed the performer's right.

(4) Once a performer has consented to the incorporation of his performance in a cinematograph film, the provisions of sub-sections (1), (2) and (3) shall have no further application to such performance.'

Substitution of new sections for section 39.

Acts not infringing broadcast reproduction right or performer's right.

Other provisions applying to broadcast reproduction right and performer's right.

Amendment of section 51.

Amendment of section 52.

15. For section 39 of the principal Act, the following sections shall be substituted, namely:—

“39. No broadcast reproduction right or performer's right shall be deemed to be infringed by—

(a) the making of any sound recording or visual recording for the private use of the person making such recording, or society for purposes of bona fide teaching or research; or

(b) the use, consistent with fair dealing, of excerpts of a performance or of a broadcast in the reporting of current events or for bona fide review, teaching or research; or

(c) such other acts, with any necessary adaptations and modifications, which do not constitute infringement of copyright under section 52.

39A. Sections 18, 19, 30, 53, 55, 58, 64, 65 and 66 shall, with any necessary adaptations and modifications, apply in relation to the broadcast reproduction right in any broadcast and the performer's right in any performance as they apply in relation to copyright in a work:

Provided that where copyright or performer's right subsists in respect of any work or performance that has been broadcast, no licence to reproduce such broadcast shall take effect without the consent of the owner of rights or performer, as the case may be, or both of them.”.

16. In section 51 of the principal Act,—

(1) in clause (a), for sub-clause (ii), the following sub-clause shall be substituted, namely:—

“(ii) permits for profit any place to be used for the communication of the work to the public where such communication constitutes an infringement of the copyright in the work, unless he was not aware and had no reasonable ground for believing that such communication to the public would be an infringement of copyright; or”;

(2) for the proviso, the following proviso shall be substituted, namely:—

“Provided that nothing in sub-clause (iv) shall apply to the import of one copy of any work for the private and domestic use of the importer.”.

17. In section 52 of the principal Act, in sub-section (1),—

(1) before the words “The following acts shall not constitute an infringement” the words, figures and letter “Subject to the provisions of section 52B” shall be inserted;

(2) in clause (a),—

(i) after the words “artistic work” the words “, not being a computer programme,” shall be inserted;

(ii) for sub-clause (i), the following sub-clause shall be substituted, namely:—

“(i) private use, including research”;

(3) after clause (a), the following clause shall be inserted, namely:—

“(aa) the making of copies of adaptation of a computer programme by the lawful possessor of a copy of such computer programme, from such copy—

(i) in order to utilise the computer programme for the purpose for which it was supplied; or

(ii) to make back-up copies purely as a temporary protection against loss, destruction or damage in order only to utilise the computer programme for the purpose for which it was supplied;”;

(4) in clause (i), the words “or the communication to such an audience of a cinematograph film or sound recording”, shall be inserted at the end;

(5) for clauses (j) and (k), the following clauses shall be substituted, namely:—

“(j) the making of sound recordings in respect of any literary, dramatic or musical work, if—

(i) sound recordings of that work have been made by or with the licence or consent of the owner of the rights in the work;

(ii) the person making the sound recordings has given a notice of his intention to make the sound recordings, has provided copies of all covers or labels with which the sound recordings are to be sold, and has paid in the prescribed manner to the owner of rights in the work royalties in respect of all such sound recordings to be made by him, at the rate fixed by the Copyright Board in this behalf:

Provided that—

(i) no alterations shall be made which have not been made previously by or with the consent of the owner of rights, or which are not reasonably necessary for the adaptation of the work for the purpose of making the sound recordings;

(ii) the sound recordings shall not be issued in any form of packaging or with any label which is likely to mislead or confuse the public as to their identity;

(iii) no such sound recording shall be made until the expiration of two calendar years after the end of the year in which the first sound recording of the work was made; and

(iv) the person making such sound recordings shall allow the owner of rights or his duly authorised agent or representative to inspect all records and books of account relating to such sound recording;

Provided further that if on a complaint brought before the Copyright Board to the effect that the owner of rights has not been paid in full for any sound recordings purporting to be made in pursuance of this clause, the Copyright Board is, *prima facie*, satisfied that the complaint is genuine, it may pass an order *ex parte* directing the person making the sound recording to cease from making further copies and, after holding such inquiry as it considers necessary, make such further order as it may deem fit, including an order for payment of royalty;

(k) the causing of a recording to be heard in public by utilising it,—

(i) in an enclosed room or hall meant for the common use of residents in any residential premises (not being a hotel or similar commercial establishment) as part of the amenities provided exclusively or mainly for residents therein; or

(ii) as part of the activities of a club or similar organisation which is not established or conducted for profit;”;

(6) for clause (s), the following clause shall be substituted, namely:—

“(s) the making or publishing of a painting, drawing, engraving or photograph of a work of architecture or the display of a work of architecture;”;

(7) clause (w) shall be omitted;

(8) after clause (y), the following clauses shall be inserted, namely:—

“(z) the making of an ephemeral recording, by a broadcasting organisation using its own facilities for its own broadcast by a broadcasting organisation of a work which it has the right to broadcast; and the retention of such recording for archival purposes on the ground of its exceptional documentary character;

(za) the performance of a literary, dramatic or musical work or the communication to the public of such work or of a sound recording in the course of any *bona fide* religious ceremony or an official ceremony held by the Central Government or the State Government or any local authority.

*Explanation.*—For the purpose of this clause, religious ceremony including a marriage procession and other social festivities associated with a marriage.”.

18. After section 52A of the principal Act, the following sections shall be inserted, namely:—

Inser-  
tion of  
new  
sections  
52B.  
and  
52C.

“52B. In case of—

(i) the reproduction of a work by means of a reprographic equipment for any of the purposes specified under section 52; or

(ii) the reproduction of any sound recording or cinematographic film by means of a tape recorder or video-cassette recorder or similar equipment for any of the purposes specified in section 52, except the making of sound recordings under clause (j) of sub-section (1) of that section,

the reproduction of any work shall be subject to the payment of remuneration to the owners of rights in such work under the provisions of section 34A.

Repro-  
duction  
of work  
subject to  
section  
34A.

52C. (1) Every copyright society appointed under section 34A shall maintain proper accounts and other relevant records and prepare an annual statement of accounts, including the income and expenditure and the quantum of remuneration paid to individual owners of rights out of the payments received from the Central Government under the Copyright Cess Act, 1992 in such form and in such manner as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

Accounts  
and  
audit.

(2) The accounts of each of the copyright societies in relation to the payments received from the Central Government shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the copyright society to the Comptroller and Auditor-General.

(3) The Comptroller and Auditor-General of India or any other person appointed by him in connection with the audit of the accounts of the copyright society referred to in sub-section (2) shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts and other documents and papers and to inspect any of the offices of the copyright society for the purpose only of such audit.

(4) The accounts of each of the copyright societies as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.”

In-  
sertion  
of new  
section  
53A.

Resale  
share  
right in  
original  
copies.

19. After section 53 of the principal Act, the following section shall be inserted, namely:—

“53A. (1) In the case of resale for a price exceeding ten thousand rupees, of the original copy of a painting, sculpture or drawing, or of the original manuscript of a literary or dramatic work or musical work, the author of such work if he was the first owner of rights under section 17 or his legal heirs shall, notwithstanding any assignment of copyright in such work, have a right to share in the resale price of such original copy or manuscript in accordance with the provisions of this section:

Provided that such right shall cease to exist on the expiration of the term of copyright in the work.

(2) The share referred to in sub-section (1) shall be such as the Copyright Board may fix and the decision of the Copyright Board in this behalf shall be final:

Provided that the Copyright Board may fix different shares for different classes of work:

Provided further that in no case shall the share exceed ten per cent. of the resale price.

(3) If any dispute arises regarding the right conferred by this section, it shall be referred to the Copyright Board whose decision shall be final.”.

Amend-  
ment of  
section 57.

20. In section 57 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) Independently of the author's copyright and even after the assignment either wholly or partially of the said copyright, the author of a work shall have the right—

(a) to claim authorship of the work; and

(b) to restrain or claim damages in respect of any distortion, mutilation, modification or other act in relation to the said work which is done before the expiration of the term of copyright if such distortion, mutilation, modification or other act would be prejudicial to his honour or reputation:

Provided that the author shall not have any right to restrain or claim damages in respect of any adaptation of a computer programme to which clause (aa) of sub-section (1) of section 52 applies.

*Explanation.—Failure to display a work or to display it to the satisfaction of the author shall not be deemed to be an infringement of the rights conferred by this section.”.*

Amend-  
ment of  
section  
63.

21. In section 63 of the principal Act,—

(1) in clause (b), the words, figures and letter “except the right conferred by section 53A” shall be inserted at the end;

(2) in the proviso, after the words "Provided that", the words "where the infringement has not been made for gain in the course of trade or business" shall be inserted.

**22.** In the proviso to section 63A of the principal Act, after the words "Provided that", the words "where the infringement has not been made for gain in the course of trade or business" shall be inserted.

**23.** After section 63A of the principal Act, the following sections shall be inserted, namely:—

1 of 1944.  
52 of 1982.

**"63B. (1)** Notwithstanding anything contained in the Central Excises and Salt Act, 1944 and the Customs Act, 1962, the non-payment of cess under the Copyright Cess Act, 1992 shall be deemed to be an offence under this Act and the provisions of section 63 shall apply.

(2) No court shall take cognizance of an offence under sub-section (1) except on a complaint made by the copyright society appointed under section 34A.

**63C.** Any person who knowingly makes use on a computer of an infringing copy of a computer programme shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees:

Provided that where the computer programme has not been used for gain or in the course of trade or business, the court may, for adequate and special reasons to be mentioned in the judgment, not impose any sentence of imprisonment and may impose a fine which may extend to fifty thousand rupees".

**24.** In section 78 of the principal Act, in sub-section (2),—

(i) after clause (c), the following clauses shall be inserted, namely:—

"(ca) the conditions for submission of application under sub-section (2) of section 33;

(cb) the conditions subject to which a copyright society shall be registered under sub-section (3) of section 33;

(cc) the inquiry for cancellation of registration under sub-section (4) of section 33;

(cd) the conditions subject to which the copyright society may accept authorisation under clause (a) of sub-section (1) of section 34 and the conditions subject to which owners of rights have right to withdraw such authorisation under clause (b) of that sub-section;

Amend-  
ment of  
section  
63A.

Inserva-  
tion of  
new  
sections  
63B  
and 63C.

Punish-  
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levied  
under  
the Copy-  
right  
Cess  
Act.

Know-  
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offence.

Amend-  
ment of  
section  
78.

(cc) the conditions subject to which a copyright society may issue licences, collect fees and distribute such fees amongst owners of rights under sub-section (3) of section 34;

(cf) the manner in which the approval of the owners of rights regarding collection and distribution of fees, approval for utilisation of any amount collected as fees and to provide to such owners information concerning activities in relation to the administration of their rights under sub-section (1) of section 35;

(cg) the returns to be filed by copyright societies to the Registrar of Copyrights under sub-section (1) of section 36;”;

(ii) after clause (d), the following clauses shall be inserted, namely:—

“(da) the manner of payment of royalty under clause (j) of sub-section (1) of section 52;

(db) the form and the manner in which the copyright society shall maintain accounts and other relevant records and prepare annual statements of accounts and the manner in which the quantum of remuneration is to be paid to individual owner of rights under sub-section (1) of section 52C.”.

## STATEMENT OF OBJECTS AND REASONS

Effective copyright protection promotes and rewards human creativity and is, in modern society, an indispensable support for intellectual, cultural and economic activity. Copyright law promotes the creation of literary, artistic, dramatic and musical works, cinematograph films and sound recordings by providing certain exclusive rights to their authors and creators. The law relating to copyright and related rights has been under comprehensive review of the Government for some time, taking into account the difficulties expressed by different groups of copyright owners and others, the experience gained from the administration of the existing law and the situation created by various technological developments that have taken place.

2. The Copyright Act, 1957 amended and consolidated the law relating to copyright in India. It was further amended by the Copyright (Amendment) Acts of 1983 and 1984 and certain improvements were effected. By the Copyright (Amendment) Act, 1992 the term of copyright was further extended by a period of ten years. Now, it is considered appropriate to further amend the provisions of the Copyright Act, 1957—

to extend effective copyright protection to the composers of Indian music, which is not available to them under the existing law which presupposes a system of notation as used in Western music;

to extend protection to all performers by means of a special right, to be known as the "performer's right", in respect of the making of sound recordings or visual recordings of their live performances, and of certain related acts;

to protect the interests of authors, assignors or licensors in regard to the assignment of copyright and the issue of licences;

to extend more effective protection to owners of copyright and related rights in the context of technological developments affecting the reproduction of works by, *inter alia*, bringing within the scope of copyright the subsequent hire or sale of copies of cinematograph films, computer programmes and sound recordings;

to further clarify the law in respect of cable, satellite and other means of simultaneous communication of works to more than one household or private place of residence, including the residential rooms of a hotel or hostel;

to make adequate provision for the special nature of computer programmes as literary works and for the protection of computer-generated works;

to extend to authors, in respect of the original copies of their paintings, sculptures and drawings and original manuscripts of literary, dramatic or musical works, a *droit de suite* or resale share right;

to include within the scope of copyright in artistic works the right (subject to appropriate exceptions) to display the work in public;

to promote the collective administration of rights through copyright societies in the interests both of the owners of rights and of the general public;

to make provision for licences whereby the reproduction of works by reprographic equipment or by means of devices such as tape-recorders and video cassette recorders, where such reproduction would not under the existing law be infringement of copyright, shall be subject to the payment of remuneration to copyright owners by means of a levy on such equipment;

to deal more effectively with the infringement of copyright and related rights;

to further improve the functioning of the Copyright Board;

to simplify and improve the law relating to copyright and related rights, in the interests of the general public, and in particular of the users as well as the owners of such rights.

3. The Bill seeks to achieve the above objects.

NEW DELHI;

ARJUN SINGH.

*The 6th May, 1992.*

*Notes on clauses*

*Clause 2.*—This clause seeks to amend section 2 of the Copyright Act, 1957 (hereinafter referred to as the principal Act).

Sub-clause (i) seeks to amend clause (a) of section 2 of the principal Act to better ensure full protection of the author's exclusive right of authorising arrangements and other alterations of his works as envisaged by article 12 of the Berne Convention for the Protection of Literary and Artistic Works (hereinafter referred to as the Berne Convention).

Sub-clause (ii) seeks to amend clause (b). The present term "architectural work of art" is difficult to interpret in some cases and is inconsistent with the general copyright principle that the aesthetic merit of a protected work is of no account. After replacement of this term by "work of architecture", which is also the term used in the Berne Convention, the courts or other authorities will not be required to consider the aesthetic value of the work but only the question whether the work qualifies as an "original work" which is a well-known concept in copyright law.

Sub-clause (iii) seeks to amend sub-clauses (v) and (vi) of clause (d). In sub-clause (v) it is now proposed to define the "author" of a cinematograph film or a sound recording as the producer thereof instead of as the owner of the film or "plate", as the case may be. The revised definition proposed is consistent with common usage and, also, is not tied to any particular technology. A definition of the term "producer" is also proposed to be inserted separately [vide sub-clause (xiii)].

Sub-clause (iv) seeks to amend clause (f), improving the present definition of "cinematograph film".

Sub-clause (v) seeks to amend clause (ff) substituting a more comprehensive definition of "communication to the public" which will remove all uncertainty in relation to satellite, cable or other means of simultaneous communication to different households, etc. Secondly, it will, read with the proposed amendment to section 14 in the principal Act (vide clause 7), extend copyright protection to the public display and exhibition of works in the interests of the authors of artistic works (subject of course to the exceptions contained in section 52 of the principal Act). Thirdly, it will incorporate the substance of the definition of "performance" contained in clause (q), enabling the latter definition to be revised to deal with performances in the context of performers' rights (vide clause 14).

This sub-clause also seeks to insert new definitions of the terms "composer", "computer", "computer programme" and "copyright society".

Sub-clause (vi) proposes to insert a further definition of "author" in regard to computer-generated works.

In the proposed new clause (fa) to be inserted in section 2, the "composer" (who is the author of a musical work) means the person who composes the music regardless of whether he records it in any form of graphical notation. This definition is considered necessary because Indian music is not commonly recorded in any complete form of graphical notation as is the case with Western music, and is to be read with sub-clause (viii).

A definition of "computer" is sought to be inserted together with a new definition of "computer programme" as the existing description of a "computer programme" in clause (o) of the principal Act is unsatisfactory.

A definition of "copyright society" is sought to be inserted which is to be read with sub-clause (xi) proposing deletion of the definition of "performing rights society". This is in order to widen the scope of collective administration consistent with clause 11 of the Bill.

Sub-clause (vi) proposes amendments in the definition of "infringing copy" contained in clause (m) consistent with the verbal changes resulting from other amendments.

Sub-clause (vii) seeks to amend the definition of "literary work" contained in clause (o) consistent with the revised definition of computer programme *vide* sub-clause (v) described above, and to clarify the position regarding computer data basis.

Sub-clause (viii) seeks to amend the definition of "musical work" contained in clause (p) in order not to restrict the term to works recorded in any form of graphical notation or even to works reduced to material form in any other manner. The absence of any requirement that a musical work shall have been reduced to material form before it can enjoy copyright protection is specifically permissible under article 2(2) of the Berne Convention though it will mark a conscious departure from British legal tradition in this regard. This amendment is proposed in order to extend copyright protection effectively to Indian musical works and may be read with the proposed definition of "composer" *vide* sub-clause (v).

Sub-clause (ix) seeks to amend the definition of "performance" consistent with the proposed introduction of a performer's right by clause 14 below. The expanded definition of "communication to the public" *vide* clause (v) described above will take care of the work done by the definition of the term "performance" at present existing in the principal Act.

Sub-clause (x) seeks to insert a definition of "performer" in view of the proposed protection of performers' rights. A wide definition of the term, not limited to performers of works, is proposed.

Sub-clause (xi) seeks to delete clause (r) in section 2 of the principal Act, and should be read with the proposed definition of "copyright society".

Sub-clause (xii) proposes substitution of the word "record" by "sound recording" throughout the Act. [For reasons, see note on sub-clause (xiv)].

Sub-clause (xiii) seeks to insert a definition of the term "producer", which is to be read with the proposed amendment of sub-clauses (v) and (vi) of section 2.

Sub-clause (xiv) proposes deletion of clause (w) which defines "record" and "recording" and is to be read with the proposed introduction of the term "sound recording" *vide* sub-clause (xv) described below.

Sub-clause (xv) seeks to insert definitions of "reprography" and "sound recording". The proposed definition of "reprography" is necessitated particularly by clause 18 discussed below. The term "sound recording" is proposed instead of the term "record" occurring at present as the latter term has become outdated through association with an obsolescent technology of sound reproduction. The proposed definition of "sound recording" will not be tied to any particular technology.

*Clause 3.*—This clause seeks to amend section 3 which defines the term "publication" and should be read with the revised definition of "communication to the public" proposed in sub-clause (v) of clause 2. The present definition of "publication" serves a dual purpose, both as providing a principle for determining the term of copyright under sections 5 and 6, and as one of the rights comprising copyright under section 14 of the principal Act. The revised definitions are intended to simplify matters in this regard.

*Clause 4.*—This clause seeks to amend section 6 to better define the role of the Copyright Board, *viz.*, to determine the date of first publication of a work where it arises in connection with any question about the term of copyright in a work. Secondly, the proviso seeks to simplify the task of the Copyright Board, not requiring it to ascertain the reasonable requirements of the public but simply to consider whether the issue of copies or communication to the public was too insignificant to mark commencement, of the term of copyright.

*Clause 5.*—This clause seeks to amend section 11 by raising the maximum membership of the Copyright Board from eight to fourteen (which would facilitate creation of benches on a regional basis) and by deleting the redundant words "a Judge of the Supreme Court" in the possible qualifications of a Chairman of the Copyright Board.

*Clause 6.*—This clause seeks to amend section 12 to improve the functioning of the Copyright Board.

*Clause 7.*—This clause seeks to amend section 14 consistent with the other amendments proposed, including the revised definitions of "publication", "performance" and "communication to the public", and in order to improve and clarify the rights comprising copyright in different classes of work.

In respect of literary, dramatic and musical works, the right to reproduce the work in any material form is sought to be clarified by specifically including the storing of the work in any medium by electronic means.

In the case of computer programmes, cinematograph films and sound recordings, the scope of copyright is proposed to be amplified to include the right to sell or give on hire or offer for sale or hire any copies of such works. The intention here is to facilitate the flow of remuneration to copyright owners which (notably in the case of cinematograph film) may be assisted by appropriate collective administration through copyright societies; these rights will also provide an added safeguard against distribution of infringing copies.

In the case of an artistic work, the right to reproduce the work is proposed to be amplified to specifically include reproduction in three dimensions of a two dimensional work or in two dimensions of a three dimensional work. This should be read with the proposed deletion of clause (w) of sub-section (1) of section 52 in the principal Act, *vide* clause 17. In its application to artistic works the revised definition of "communication to the public" will also confer on the copyright owner a right of public display of the work (subject of course to the exceptions provided in section 52).

In regard to cinematograph films, the right to make a copy of the film is proposed to be amplified to specifically include a photograph of any image forming part of the film (subject of course to exceptions provided for in section 52).

**Clause 8.**—This clause seeks to amend section 19 which relates to assignment of copyright and will also apply, by virtue of the proposed insertion of a new section 30A (*vide* clause 10), to licences under section 30. The proposed sub-section (2) seeks to clarify what is required in any assignment of copyright, in the interests of both assignor and assignee. The proposed sub-sections (3), (4) and (5) seek to provide for contingencies in which the agreement effecting assignment of copyright is not clear, and to protect the interests of the assignor in such cases.

**Clause 9.**—This clause seeks to substitute the existing provisions of section 19A by clearer and more detailed provisions protecting authors and assignors from failure by the assignee to exercise the rights assigned to him, and also to provide authors and assignors with remedies through the Copyright Board for insufficient exercise of rights, for non-payment of royalties or in connection with other disputes which may arise, while at the same time, protecting the legitimate interests of publishers or other assignees.

**Clause 10.**—This clause seeks to extend the protection enjoyed by assignors in respect of assignment of copyright to licensors in respect of licences under section 30 of the Act by inserting a new clause 30A.

**Clause 11.**—This clause seeks to substitute new provisions for Chapter VII to make provision for copyright societies in respect of any kind of right (and not merely "performer's rights") and to make adequate general provision for the registration and management of such societies in the interests both of authors and of other copyright owners for whom it would be impracticable or uneconomical to licence the use of their work individually to all users, or to collect fees from them, and also in the

interests of the general public and particularly of users of rights who may not conveniently be able to obtain licences from individual authors or copyright holders; and thus to improve the enforcement of copyright with benefits both to the holders of rights and to the general public.

**Clause 12.**—This clause seeks to substitute a new heading in respect of Chapter VIII to reflect the protection now proposed to be accorded to performers as well as broadcasting organisations. The term “Broadcasting organisation” is proposed to be substituted for the term “Broadcasting authorities” as expressing the intention of the statute more clearly.

**Clause 13.**—This clause seeks to substitute a new provision for the existing provisions of section 37 in the interest of clarity and completeness. The word “broadcast” is used rather than the undefined term “programme”. Secondly, it is proposed that merely making a broadcast heard in public (as under the existing provision) should not be infringement of the broadcast reproduction right to avoid possible harassment of the general public; instead, causing the broadcast or any substantial part thereof to be heard or seen by the public on payment of any charges will be infringement. Thirdly, it is sought to amplify and clarify the broadcast reproduction right by specifying that the recording of a broadcast, or making copies of such recordings of a broadcast, or selling or hiring such recordings or offering them for sale or hire, will constitute infringement. This will, however, be subject to appropriate exceptions as proposed in clause 15.

**Clause 14.**—This clause seeks to insert new provisions creating a special right to be known as the performer’s right which will conform to the requirements of the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (hereinafter referred to as the Rome Convention). This includes the right to make a sound recording or visual recording of a performance and some consequential right in respect of copies of sound recording and visual recordings, which are sought to be provided in a manner not conflicting unduly with the copyright in a sound recording or cinematograph film or with the broadcast reproduction right. The proposed provisions of sub-section (4) of section 38 are based upon article 19 of the Rome Convention. The performer’s right will benefit performers as defined under clause 2(x) above and will also provide an additional source of protection to those composers of Indian music who improvise their compositions during public performances.

**Clause 15.**—This clause seeks to insert provisions in section 39 specifying the cases where the broadcast reproduction right or performer’s right shall not be deemed to be infringed. These proposed provisions are analogous to those contained in section 52 of the principal Act in respect of copyright.

**Clause 16.**—This clause seeks to amend section 51. The proposed substitution of a new provision for sub-clause (ii) of clause (a) of section 51 makes verbal changes necessitated by the proposed amendment of the terms “performance” and “communication to the public” (vide clause 2). The proviso to section 51 is proposed to be substituted by one permitting imports for private and domestic use of one copy of

any work (rather than two copies of most works but none of either a cinematograph film or a "record" as in the existing provision). This is proposed because, on the one hand, import of a single copy should be sufficient for private and domestic use and, on the other, total exclusion of films and sound recordings from the scope of this proviso may result in harassment of a private citizen who may *bona fide* purchase abroad a copy of a cinematograph film (e.g. video tape) or a sound recording, which is not an infringing copy in the country of purchase though it is in India (e.g. because of a different term of copyright, etc.); such a person need not be prevented from importing his personal copy for his private use in India.

**Clause 17.**—This clause seeks to amend section 52 of the principal Act. Sub-clause (1) seeks to make the provisions of section 52 subject to the provisions of a new section 52B which is proposed to be inserted by section 18.

Sub-clause (2) further seeks to amend clause (a) in sub-section (1) of section 52 because an unduly narrow interpretation of the words "private study" (used at present) may result in harassment to the public. It is proposed to exclude computer programmes from the scope of this clause since a general right to reproduce them for private use is not necessary in the interests of *bona fide* users of computer programmes. It is further proposed to insert a new clause (aa) in sub-section (1) of section 52 to cover the legitimate requirement of the lawful owner of a copy of a computer programme to make adaptations for "debugging" and to make back-up copies.

Sub-clause (3) seeks amendment of clause (i) of sub-section (1) of section 52 which is necessitated by the proposed revised definitions of the terms "performance" and "communication to the public".

Sub-clause (4) seeks to revise the provisions of clause (j) and (k) of sub-section (1) of section 52. The revision of clause (j) seeks to introduce safeguards to prevent misuse of this provision. The proposed revision of clause (k) seeks to limit the free playing of sound recordings in residential premises for use in common rooms of residential premises other than hotels or similar commercial establishments, as part of the amenities provided exclusively for residents, or as part of the activities of a club or similar organisation which is not established or conducted for profit.

Sub-clause (5) seeks to substitute clauses (j) and (k) of sub-section (1) of section 52 to appropriately qualify the right of display created by the new definition of the term "communication to the public" proposed *vide* clause 2(v) described above, supplementing in this regard the existing provisions of clauses (t) and (u).

Sub-clause (6) seeks to substitute clause (s).

Sub-clause (7) seeks to delete clause (w) of sub-section (1) of section 52 as being unnecessary, inappropriate and also difficult to interpret in particular cases.

Sub-clause (8) seeks to insert two new clauses (z) and (za) in sub-section (1) of section 52 dealing respectively with ephemeral recordings made by a broadcasting organisation and with *bona fide* religious and official ceremonies, which it is inappropriate to make subject to copyright.

*Clause 18.*—This clause seeks to insert new sections 52B and 52C, which may be read with the proposed insertion of a section 34A *vide* clause 11. The intention is to create what in common copyright parlance is known as a "non-voluntary licence" in respect of reprography and "home taping", whereby members of the public remain free to perform the acts contemplated in section 52 of the principal Act without obtaining the permission of the owners of copyright, but the latter is entitled to remuneration in the form of an amount to be collected on the manufacture or import of the equipment used for such acts, which is distributed through a copyright society to the entitled copyright owners. Copyright societies will determine the quantum of remuneration to individual copyright owners by fixing criteria having regard to the number of copies of the work in circulation, and shall restrict remuneration to those copyright owners whose works have attained reasonable circulation. This method has been resorted to in several countries because of the ease with which members of the public can now reproduce works by the means in question. The provisions will become operative only when the Central Government is of the opinion that a copyright society for a class of work is generally administering the rights in respect of them throughout India. The Copyright Cess Bill, 1972, seeks to provide for the remuneration described above by means of a cess.

*Clause 19.*—This clause seeks to insert a new section 53A giving the authors of original copies of paintings, sculptures or drawings or of the original manuscripts of literary, dramatic or musical works the right to a share in the subsequent sales of such original copies or original manuscripts, which is the right commonly known as "*droit de suite*" and which is contemplated optionally for member States by article 14 *ter* of the Berne Convention. Besides promoting the interests of authors within India, this proposed provision would also have the effect of obliging those other member States of the Berne Convention which provide for *droit de suite* in their own laws to accord similar rights to Indian authors in respect of sales effected in their countries.

*Clause 20.*—This clause seeks to amend sub-section (1) of section 57 (concerning author's special rights) in order to limit the remedies available to the author in respect of distortion, mutilation, modification or other acts in respect of his work to cases where such acts would be prejudicial to his honour or reputation. The present provision in the principal Act, whereby even distortion, mutilation and modification of the work which are not prejudicial to the author's honour or reputation would violate the author's special rights, are likely to have anomalous, unintended consequences and are, incidentally, in excess of the requirements of the Berne Convention. It is, therefore, proposed to limit the author's special rights in this regard to the actual requirements of the Berne Convention. Secondly, it is proposed to specify that the author's special rights shall subsist during the term of copyright. Thirdly, it

is proposed to add a proviso in respect of computer programmes consistent with the proposal in sub-clause (2) of clause 17 described above, whereby adaptation of a computer programme for the purpose commonly known as "debugging" is sought to be made permissible. Finally, it is proposed to add an explanation to remove any possible doubt as to the right of the current owner of an original copy of an artistic or other work to display or keep such copy at his discretion.

*Clause 21.*—This clause seeks to amend section 63 of the principal Act.

Sub-clause (1) seeks to exclude from criminal liability any infringement of the *droit de suite* proposed to be inserted in the principal Act by clause 18 described above. It is intended to limit the remedies available in respect of this new right to civil remedies in view of the *bona fide* difficulties which may exist in locating the author at the time of the sale.

Sub-clause (2) seeks to amend the proviso to section 63 in order to suitably guide and limit the discretion of the court to impose penalties below the normal minimum.

*Clause 22.*—This clause seeks to make a similar amendment in the proviso to section 63A to which clause 21 seeks to make in respect of section 63.

*Clause 23.*—This clause seeks to insert two new sections 63B and 63C. The new section 63B will make failure to pay copyright cess an offence. The proposed new section 63C will make knowing use of an infringing copy of a computer programme an offence. Under the proviso, the court will have discretion to impose a sentence lower than the normal minimum in cases where the computer programme was not used for gain or in the course of trade or business. The insertion of such a section in respect of computer programmes is considered necessary in view of the practical difficulty of proving commission of the specific acts enumerated in section 51 in respect of infringing copies of computer programmes, whereas use of an infringing copy of a computer programme may be proved by evidence of its application, and conscious use of such infringing copies should be curbed.

## MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 24 of the Bill seeks to insert new clause in sub-section (2) of section 78 of the Copyright Act, 1957 so as to enable the Central Government to make rules in respect of certain matters provided in the Bill. These matters relate to—

- (i) the conditions for submission of application under section 33;
- (ii) the conditions subject to which a copyright society shall be registered under section 33;
- (iii) the inquiry for cancellation of registration under section 33;
- (iv) the conditions subject to which the copyright society may accept authorisation under section 34 and the conditions subject to which the owners of rights have right to withdraw such authorisation under that section;
- (v) the conditions subject to which a copyright society may issue licences, collect fees and distribute such fees amongst owners of rights under section 34;
- (vi) the manner in which approval of owners of rights regarding collection and distribution of fees, approval for utilisation of any amount collected as fees and to provide to such owners information concerning activities in relation to the administration of their rights under section 35;
- (vii) the returns to be filed by copyright societies to the Registrar of Copyrights under section 36;
- (viii) the manner of payment of royalty under section 53;
- (ix) the form and the manner in which the copyright society shall maintain accounts and other relevant records and prepare annual statements of accounts and the manner in which the quantum of remuneration is to be paid to individual owner of rights under section 52C.

2. As the matters with respect to which rules under the aforesaid clauses are sought to be made are matters of procedure or detail or matters with respect to which it is not practicable to make express provision in the legislation itself, the delegation of legislative power is of normal character.

C. K. JAIN,  
Secretary-General.

